Annual Report
for the fiscal year ending March 31, 2010

Workers' Advisers Program

NOVA SCOTIA
Labour & Workforce Development

NOVA SCOTIA
Chief Worker Adviser

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July 1, 2010

The Honourable Marilyn More
Minister of Labour & Workforce Development
5151 Terminal Road
Halifax, NS

Dear Minister More:

In accordance with Section 268 of the Workers' Compensation Act, S.N.S. 1994-95 c.10 (as amended) (Part III), I have the honour of submitting the report of the Workers' Advisers Program for the period April 1, 2009, to March 31, 2010.

Yours truly,

Kenny LeBlanc
Barrister & Solicitor
Chief Worker Adviser

copy: Margaret MacDonald, Deputy Minister
Labour & Workforce Development

copy: Barbara Jones Gordon, Executive Director
Labour Services Branch
Labour & Workforce Development

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Letter from the Chief Worker Adviser

The Workers' Advisers Program had a very busy and productive year in 2009–10. At year-end the Program had 924 active files. During the year the Program had 1032 requests for service, 968 files were opened, and we provided service to 1859 clients.

The majority of the Program's work continued to be at the Workers' Compensation Appeals Tribunal. During 2009–10 the Program filed 335 appeals with the Appeals Tribunal on behalf of workers. We also filed 129 appeals to Hearing Officers and 3 appeals to the Nova Scotia Court of Appeal.

Workload and staffing issues contributed to the Program exceeding its four-week target to provide representation to workers contacting us for legal services. The average wait time for service over the whole province was 4.9 weeks. Hopefully, with a new Workers' Adviser lawyer joining our Sydney office this summer, as well as other measures such as working with the WSIS Liaison Officer and the Office of the Workers' Counselor, we will be able to address this delay and bring our average provincial wait time under four weeks in 2010–11.

Among our successes during the year were positive results we obtained for workers in the Almon and Kaye decisions from the Court of Appeal. Almon confirmed that a worker's medical disability pension benefits from her employer could not be used to reduce her workers' compensation earnings-replacement benefits. The Appeals Tribunal subsequently applied Almon in other cases to rule against reducing earnings-replacement benefits where workers received other non-employment income through their employers.

Kaye confirmed that a worker injured between March 23, 1990 and February 1, 1996 could receive benefits and services under the Chronic Pain Regulations prior to the November 25, 1992 cut-off date in section 228 of the Workers' Compensation Act.

We were unsuccessful at the Court of Appeal in the Young and Gillis-Andrea cases, however, each of these cases confirmed legal principles that will guide the Program in its future work.

I continued to be a member of the Heads of Agencies Committee and the Issues Resolution Working Group as we worked to improve services to stakeholders of the Workplace Safety and Insurance System (WSIS). In my role as Chief Worker Adviser I participated in the WSIS Annual General Meeting in May 2009 and the Fall Consultation Conference in November 2009.

In 2009–10 I continued my involvement with Labour and Workforce Development's Human Resources Initiatives and I assumed the role of Chair of the Human Resources Initiatives Team, which is responsible for coordinating the work of the Department's Healthy Workplaces, Diversity, and Recognition Teams.

At the end of May 2009 I was a guest participant in the workers' compensation component and discussion at the annual conference of the Council of Canadian Administrative Tribunals, which was held in Halifax.

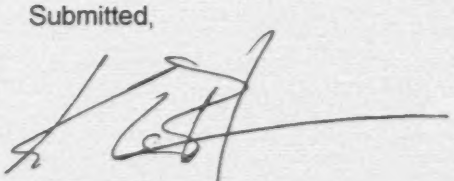
In September 2009 I attended the annual conference of the Canadian Association of Workers Advisors and Advocates (CAWAA), which was hosted in Vancouver by my British Columbia counterpart. This conference provided a great learning and networking opportunity with my colleagues across the country and, in my capacity as Chair of CAWAA's Research Committee, I presented a well-received paper reviewing significant workers' compensation-related cases over the previous year. This was the third year in a row that I presented such a paper at CAWAA's annual conference.

I sponsored Ms. Jessie Parkinson, of the Nova Scotia Office of the Workers' Counselor, to attend the CAWAA conference in Vancouver. Ms. Parkinson was well-received and made a great contribution to the conference and all the members agreed that CAWAA would amend its constitution to permit associate members' participation and attendance at future CAWAA conferences.

During 2009–10 I initiated and took part in occasional meetings with members of the provincially-funded Injured Workers' Associations and with Ms. Parkinson. In these meetings we discussed many issues, including our particular and distinct roles. We agreed that the Program's mandate under Part III of the Act and the regulations means that its main role is to represent injured workers at various formal levels of appeal. The Office of the Workers' Counselor is mainly concerned with education and helping injured workers navigate the workers' compensation system outside of the formal appeal context. The Injured Workers' Associations reflect local and grassroots concerns and their main purpose is to serve as a support for injured workers and their families. The Injured Workers' Associations enjoy a degree of institutional independence that allows them to engage in awareness-raising activities in a way that would not be appropriate for the Program and the Office of the Workers' Counselor. I expect these meetings will continue in 2010–11.

We look forward to another busy and successful year in 2010–11.

Submitted,



Kenny LeBlanc
Chief Worker Adviser

Mandate and History

Workers injured and covered under Nova Scotia's Workers' Compensation Act are protected through benefits and services available under a no-fault insurance system. Through what is known as the historic trade-off, workers and their families give up the right to sue for the consequences of work-related injuries in return for compensation payable regardless of fault and without the need to pursue a lawsuit in court. The other side of the historic trade-off is that employers are responsible to pay assessments to cover the cost of the system in return for immunity from liability due to work-related injuries.

The Workers' Compensation Board of Nova Scotia (WCB), established under Part I of the Act, is the policy-leader for the workers' compensation system, administers the Accident Fund made up of employers' assessments which covers the costs of the system, and is responsible for investigating and adjudicating claims in the first instance. Workers or employers may appeal WCB decisions to the Nova Scotia Workers' Compensation Appeals Tribunal (WCAT), established under Part II of the Act. There is a limited right of appeal from WCAT decisions to the Nova Scotia Court of Appeal.

The Workers' Advisers Program of Nova Scotia is established under Part III of the Act and the regulations as an independent legal clinic to provide free assistance, advice, and representation to injured workers and their families claiming workers' compensation benefits and who meet the Program's eligibility criteria. As a general rule, if the Program determines that a worker has a reasonable expectation of success of obtaining at least $500 or its equivalent in an appeal of a claim, that worker will meet the Program's eligibility criteria for service.

The Program receives the funding for its operations by way of a grant from the Accident Fund.

The Chief Worker Adviser is responsible for supervising the Program and reports to the Minister of Nova Scotia's Department of Labour and Workforce Development. The Program's head office is in Halifax and we have an office in Sydney.

Workers' Advisers (who are lawyers and non-lawyers) with the Program travel throughout the province to meet with workers and discuss their claims and represent them at hearings at all levels of appeal in the workers' compensation system, including Court if necessary. Only Workers' Advisers who are lawyers are allowed to represent workers in Court.

The Workers' Advisers Program was established in February 1996 when Part III, along with most of the rest of the current Workers' Compensation Act, was proclaimed into force. The Program under Part III replaced the former Workers' Counselors' Program, which administered a certificate system whereby private law firms around the province provided legal representation to workers in connection with their workers' compensation claims.

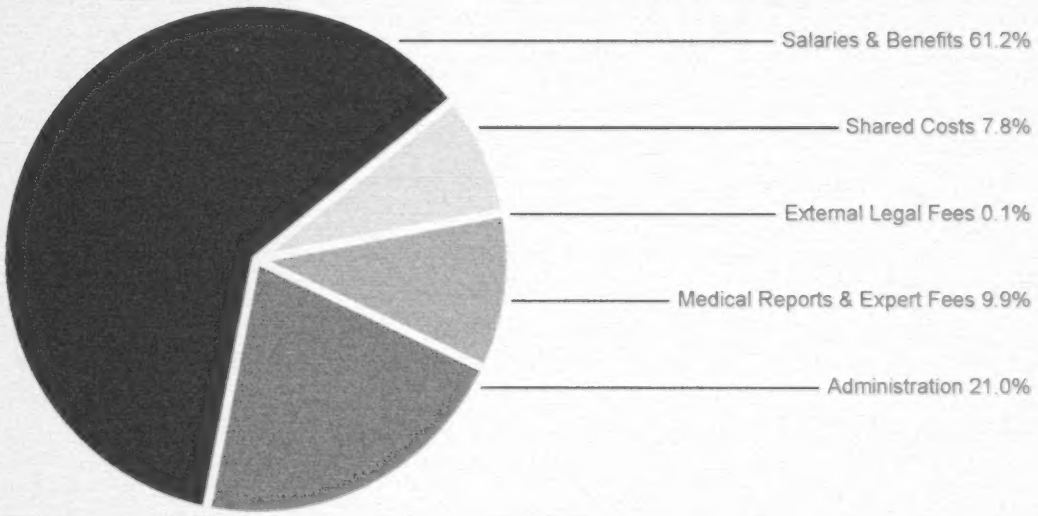
The Program's staff arranged for the opening of the Sydney office in May 1997. The Program has maintained the Halifax and Sydney offices since that time, while monitoring the caseload by county to determine whether other offices in other parts of the province should be opened.

Annual Program Expenditures

The total cost associated with the operation of the Program is charged to the Accident Fund administered by the WCB. The final 2009–10 report provided by the Department of Finance indicates the following expenditures:

	2009–10	2008–09	2007–08	2006–07	2005–06	2004–05
Salaries & Benefits	$1,593,543	$1,643,841	$1,327,695	$1,390,072	$1,270,467	$1,336,684
Administrative	$547,932	$520,494	$553,318	$414,064	$532,192	$421,692
Medical Reports & Expert Fees	$257,401	$138,257	$101,843	$74,773	$109,816	$225,628
Consulting Fees	N/A	N/A	N/A	N/A	$26,875	$82,787
Less Chargeable to Other Departments	**($11,162)**	**($102,310)**	**($32,568)**			
TOTAL	**$2,387,714**	**$2,200,282**	**$1,950,288**	**$1,881,065**	**$1,939,349**	**$2,066,791**
% of Authority Spent	**97.1%**	**89.4%**	**82.1%**	**83.1%**	**84.7%**	**89.2%**

2009-10 Expenditures

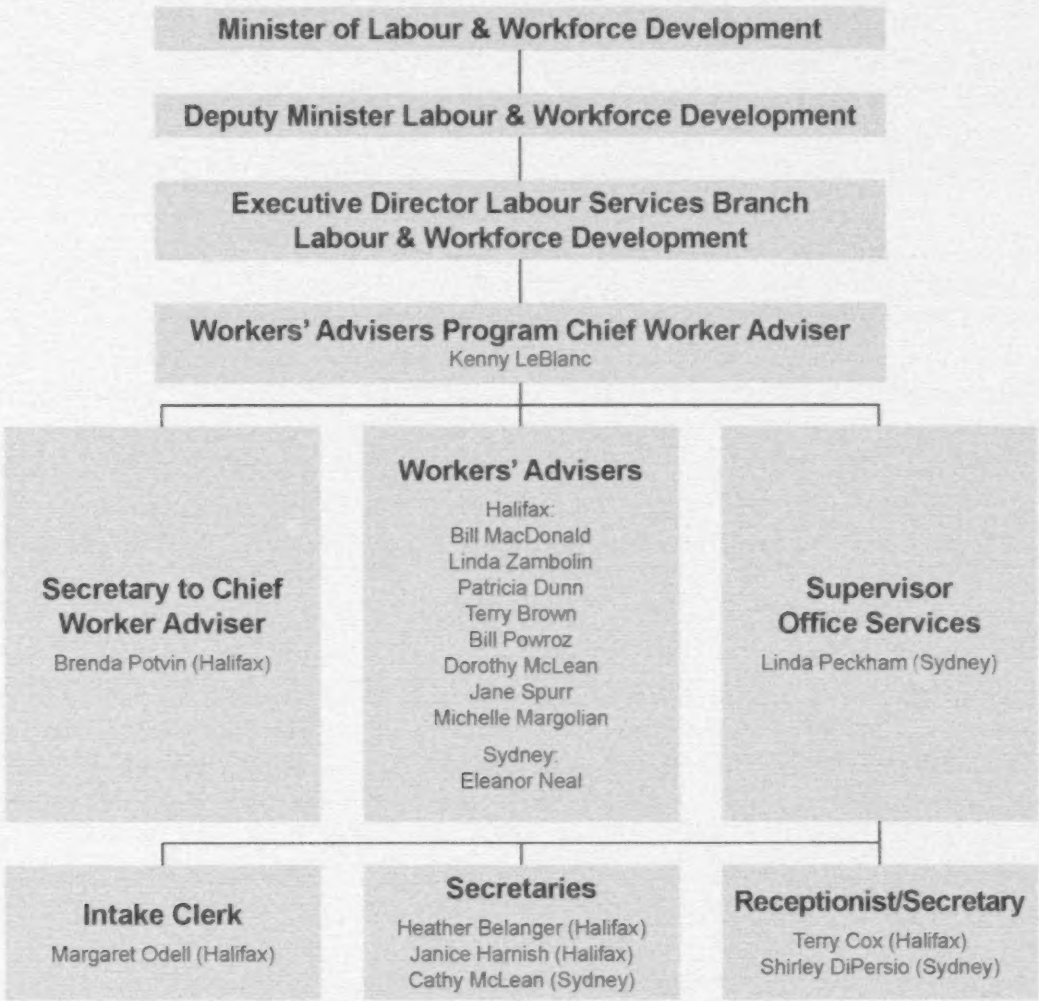


Personnel

The Chief Worker Adviser, the Secretary to the Chief Worker Adviser, the Intake Clerk, eight Workers' Advisers, a secretary/receptionist, and two secretaries work out of the Halifax office.

Two Workers' Advisers, the Program's Supervisor Office Services, a secretary/ receptionist, and a secretary work out of the Sydney office.

Organizational Chart



(Incumbents in place as of March 31, 2010)

Client Services

The service provided to workers by the Workers' Advisers Program can include representation through all phases of appeal in the workers' compensation system. It can begin with the first denial at the WCB and end when an appeal is completed or the worker is no longer eligible for service.

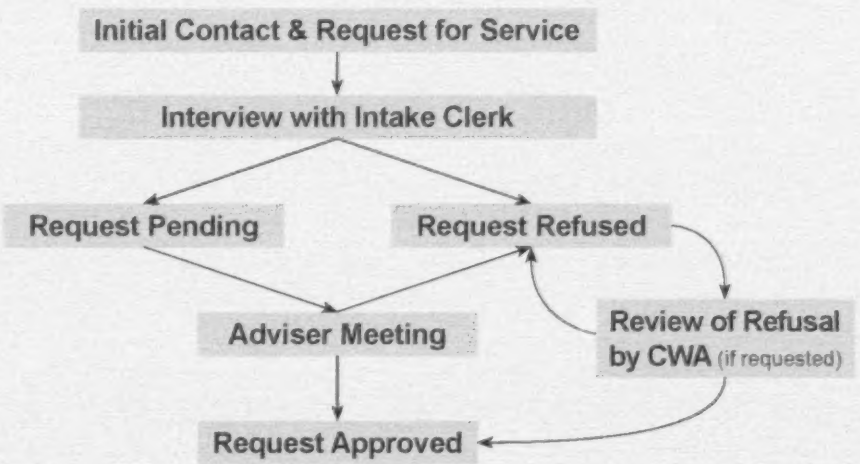
Intake

The Program's intake process first determines if the worker's request for service results from a written WCB decision. The Program's Intake Clerk is the point person for a worker's initial contact with the Program. If the worker does not have a written decision, the Intake Clerk will usually refuse service, but that worker may be referred to the Office of the Worker Counselor for assistance.

If the worker has a written WCB decision, the Intake Clerk will take the necessary information and open a file which will be assigned to a Workers' Adviser. Subsequently, the Workers' Adviser will contact the worker and arrange to discuss the claim and appeal in person or by telephone.

A worker refused service may request the application to be forwarded to the Chief Worker Adviser for review and further consideration.

A worker requesting service from the Program for the first time as a result of a WCAT decision bypasses the usual intake process and is referred directly to the Chief Worker Adviser for review and consideration. This process is followed in relation to WCAT decisions because a worker only has 30 days under the Workers' Compensation Act to file a possible appeal to the Nova Scotia Court of Appeal from a WCAT decision.



Operations

Case Summary Statistics

Active number of files at year beginning April 1, 2009 = 837
Active number of files at year ending March 31, 2010 = 924

2009–10	Requests for Service	Files Opened	Files Closed	# Clients Served 2008–09
Apr/May/Jun	297	297	191	1,134
Jul/Aug/Sep	226	223	233	1,357
Oct/Nov/Dec	280	258	204	1,615
Jan/Feb/Mar	229	244	238	1,859
TOTAL FOR YEAR	**1,032**	**1,022**	**866**	**1,859**

"Requests for Service" represents the number of calls received by the Intake Clerk for processing during each of the reporting periods.

"# Clients Served 2009–10" represents the number of active files on April 1, 2009, combined with the total number of files opened to the end of the fiscal year (March 31, 2010).

On March 31, 2010, there were 30 pending service requests or clients that had gone through the intake process but had not yet been contacted by a Workers' Adviser to discuss their case.

Process

Service Waiting Time

Intake Period 2009–10	Halifax	Sydney	Out-of-Town		
			Bridgewater/ Yarmouth	Digby/Kentville/ Amherst/Truro	New Glasgow/ Antigonish/Port Hawkesbury
April/May/June	4.6	4.2	3.2	4.2	5.0
July/August/September	4.4	4.8	5.3	4.0	4.9
October/November/December	3.5	6.0	4.5	4.6	5.2
January/February/March	6.1	7.1	4.3	6.0	5.9
AREA AVERAGES	**4.7**	**5.5**	**4.3**	**4.7**	**5.3**
LOCAL OFFICES AVERAGE WAITING PERIOD					**5.1 weeks**
OUT-OF-TOWN AVERAGE WAITING PERIOD					**4.8 weeks**
PROVINCIAL AVERAGE WAITING PERIOD					**4.9 weeks**

The Program continues to monitor the waiting time for service on a monthly basis. The target remains at two to four weeks. **The provincial average waiting period for 2009–10 was 4.9 weeks (includes local and out-of-town times).**

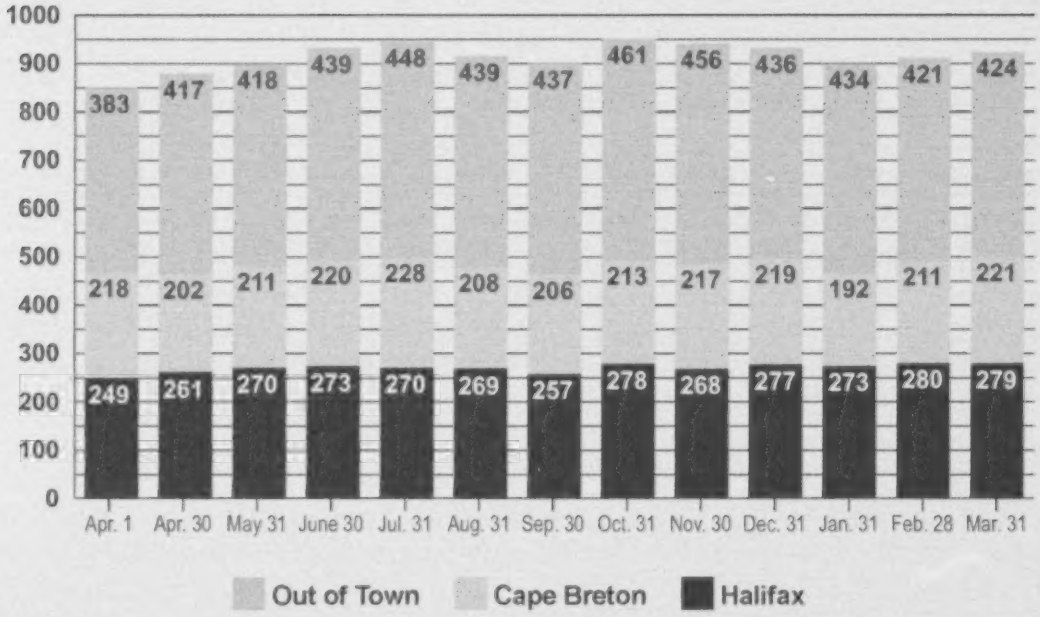
The waiting period for service for all intake is calculated from the date the worker first contacts the Intake Clerk to the date of the worker's first appointment with a Workers' Adviser (in person or by telephone) to discuss the worker's appeal. Factors affecting service wait times include access to the WCB claim file, both paper and electronic, and the Workers' Advisers' travel to out-of-town appointments and workload.

Client Count by County

On April 1, 2009, the Program had 837 active files. On March 31, 2010, there were 924 active files, a 10 percent increase over the course of the year with an average of **913** open files between April 1 and March 31.

County	Apr. 1/09	April	May	June	July	August	September	October	November	December	January	February	Mar. 31/10
Annapolis	**17**	20	19	21	19	18	18	20	17	18	17	19	**17**
Antigonish	**8**	9	10	10	13	12	14	16	16	13	11	10	**12**
Cape Breton	**182**	202	211	220	228	208	206	213	217	219	192	211	**221**
Colchester	**31**	31	34	34	33	34	33	34	34	32	32	27	**25**
Cumberland	**55**	53	55	56	59	57	57	61	61	61	62	61	**59**
Digby	**6**	6	6	7	6	6	5	5	5	5	3	4	**4**
Guysborough	**14**	14	14	14	14	13	17	17	12	13	13	12	**14**
Halifax	**253**	261	270	273	270	269	257	278	268	277	273	280	**279**
Hants	**37**	42	40	43	43	44	41	45	48	41	38	37	**37**
Inverness	**8**	10	7	10	12	12	14	13	15	13	12	11	**12**
Kings	**54**	57	57	59	61	60	58	61	58	54	56	57	**53**
Lunenburg	**69**	71	76	76	80	79	75	74	78	77	81	81	**77**
Pictou	**42**	45	48	49	45	43	38	42	42	40	40	37	**44**
Queens	**14**	13	13	14	13	10	11	12	12	12	12	13	**14**
Richmond	**12**	11	10	12	13	13	15	15	14	15	15	13	**14**
Shelburne	**8**	9	8	9	9	9	9	10	10	9	11	12	**12**
Victoria	**2**	3	1	2	2	1	1	1	2	2	2	4	**4**
Yarmouth	**10**	10	9	11	13	13	12	14	12	11	9	7	**9**
Other	**15**	13	11	12	13	15	19	21	20	20	20	16	**17**
TOTAL	**837**	**880**	**899**	**932**	**946**	**916**	**900**	**952**	**941**	**932**	**899**	**912**	**924**

Client Count by Area



- The above chart graphically displays the proportion of clients living in Halifax, Cape Breton and Out of Town. The Out of Town figures represent all clients living outside metro Halifax or Cape Breton.
- An average of 29.5 percent of the Program's clients live within the Halifax Regional Municipality; 23.1 percent live within the Cape Breton Regional Municipality and 47.4 percent reside outside the CBRM or HRM areas.
- Files are distributed between the Halifax and Sydney offices. One of the Advisers serving the Sydney area is located in Halifax. In addition, there is a vacant Workers' Adviser position in Sydney which will be filled in 2010–11.

File Distribution

Representation

Workers' Advisers provide representation to injured worker and their families pursuing workers' compensation benefits and services. Workers' Advisers consult with workers and others regarding claims, attend meetings and hearings, and obtain evidence and present it to workers' compensation decision makers.

Workers' Advisers have good access to research and other resources required to pursue appeals and are familiar with issues and pressures affecting injured workers and strive to achieve an effective working relationship with them.

The Workers' Advisers Program does not represent injured workers as a special interest group or lobby government for changes in legislation. The Program does not pursue other matters outside of workers' compensation claims, such as Canada Pension benefits, Unemployment Insurance, or Social Assistance.

Workers' Advisers do not represent employers and they do not advise or represent governments or other agencies.

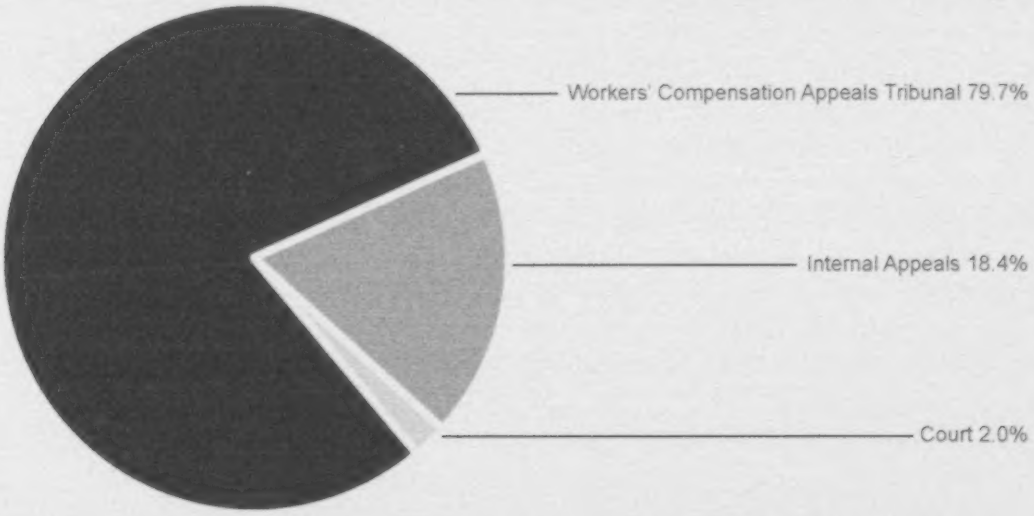
Program Statistics

	Submissions/Hearings Done			New Appeals Filed		
	Court*	Hearing Officer	WCAT	Court	Hearing Officer	WCAT
April	2	6	42	0	15	29
May	0	10	33	0	16	44
June	2	15	50	1	10	36
July	0	7	54	0	11	37
August	1	6	32	1	11	32
September	2	15	48	0	8	29
October	0	19	48	1	8	28
November	2	7	63	0	14	25
December	1	9	39	0	11	21
January	1	11	40	0	14	24
February	1	9	40	1	10	31
March	1	8	40	0	10	16
TOTAL	13	122	529	4	138	352

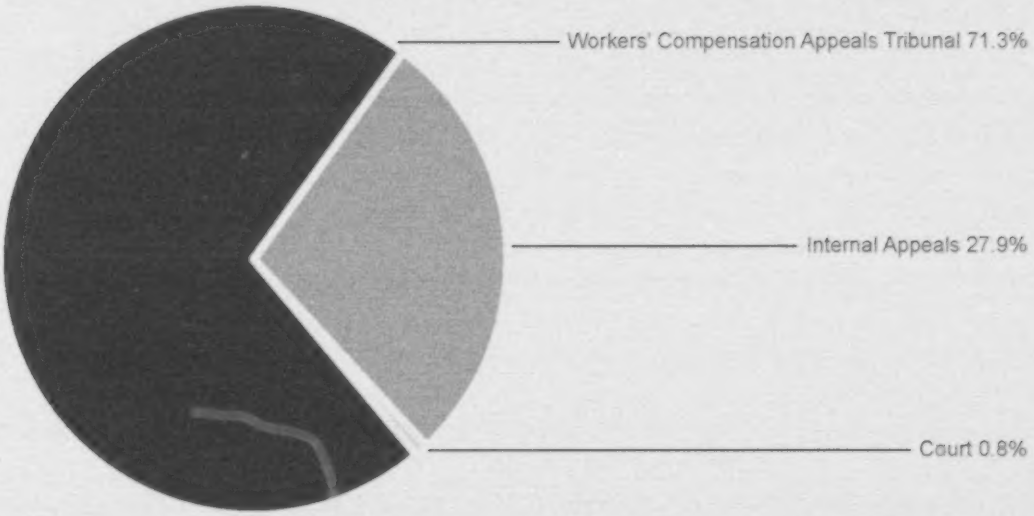
**includes Chambers*

- The Program's resources are mainly focussed on appeals at the WCAT level, with a lower level of activity at the Hearing Officer level and minimal activity at the Court of Appeal.
- Workers typically file their own appeals to the Hearing Officer before going through the Program's intake process.
- Four new appeals were filed to the Court of Appeal during the year 2009–10.

Hearings/Submissions



New Appeals Filed



Client Satisfaction

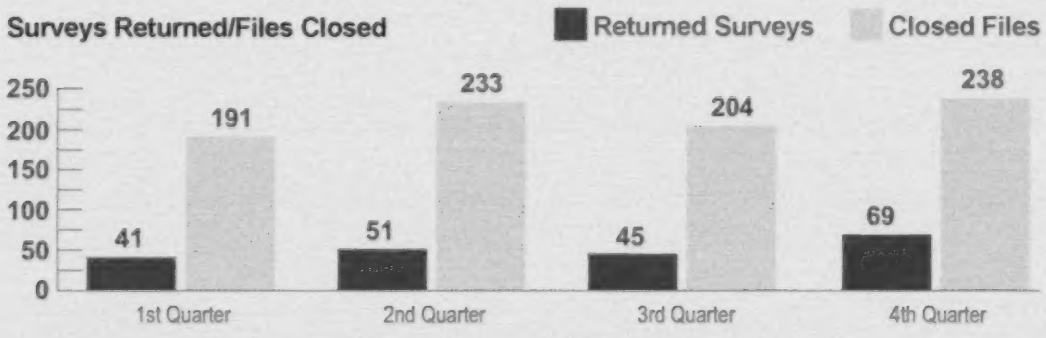
Client Survey Results

The Program began mailing satisfaction surveys to clients with their closed file in April 2003. This practice will continue so that future results will allow us to track satisfaction trends and address service issues.

	Apr./ May/ June	July/ Aug./ Sep.	Oct./ Nov./ Dec.	Jan./ Feb./ Mar.	Total	% RETURN FOR YEAR
Closed Files	191	233	204	238	866	
Returned Surveys	41	51	45	69	206	**23.8%**
Provided Comments	26	42	33	47	148	**71.8%**
Not Positive Outcome	15	12	13	24	64	**31.1%**
Negative Comments	3	3	6	6	18	**8.7%**
% Return for the Quarter	21.5%	21.9%	13.3%	29.0%		
Variance from Previous Quarter	-1.8%	0.4%	-8.6%	15.7%		

Although 31.1% percent of the clients returning surveys did not have a positive outcome with respect to their appeal (64 divided by 206 surveys returned), only 18 negative comments were received (8.7%). **Our satisfaction rate remains high.**

Based on the data obtained from the returned surveys, we can determine that **92.4%** of our clients **"strongly agreed"** or **"agreed"** that the service provided by the Program staff satisfied their requirements.



Specific results to our questions are as follows:

		Strongly Agree	Agree	Disagree	Strongly Disagree
1. The program staff I dealt with were professional and friendly at all times.	Apr/May/Jun	75.6%	19.5%	4.8%	0.0%
	Jul/Aug/Sep	84.3%	13.7%	0.0%	2.0%
	Oct/Nov/Dec	85.0%	7.5%	2.5%	5.0%
	Jan/Feb/Mar	80.7%	14.7%	0.0%	0.0%
% FOR YEAR		**81.4%**	**13.9%**	**1.8%**	**1.8%**
2. In my experience, I felt the program staff had the knowledge and experience for dealing with my situation.	Apr/May/Jun	70.7%	24.4%	4.9%	0.0%
	Jul/Aug/Sep	82.4%	9.8%	5.9%	2.0%
	Oct/Nov/Dec	80.0%	7.5%	7.5%	5.0%
	Jan/Feb/Mar	71.6%	59.5%	4.5%	2.9%
% FOR YEAR		**76.2%**	**25.3%**	**5.7%**	**2.5%**
3. I felt the program staff did their very best to provide me with the best possible service.	Apr/May/Jun	68.2%	21.9%	9.8%	0.0%
	Jul/Aug/Sep	78.4%	11.8%	5.9%	3.9%
	Oct/Nov/Dec	80.0%	5.0%	2.5%	12.5%
	Jan/Feb/Mar	76.1%	14.1%	4.0%	4.5%
% FOR YEAR		**75.7%**	**13.2%**	**5.6%**	**5.2%**
		All the Time	**Most of the Time**	**Sometimes**	**Never**
4. My calls were returned within 24 hours.	Apr/May/Jun	65.8%	24.4%	7.3%	2.4%
	Jul/Aug/Sep	66.7%	25.5%	3.9%	3.9%
	Oct/Nov/Dec	60.0%	22.5%	5.0%	12.5%
	Jan/Feb/Mar	67.0%	19.7%	9.7%	1.2%
% FOR YEAR		**64.9%**	**23.0%**	**6.5%**	**5.0%**
5. My questions were answered to my satisfaction.	Apr/May/Jun	70.7%	21.9%	7.3%	0.0%
	Jul/Aug/Sep	74.5%	15.7%	5.9%	3.9%
	Oct/Nov/Dec	77.5%	5.0%	10.0%	7.5%
	Jan/Feb/Mar	79.1%	10.5%	6.4%	2.8%
% FOR YEAR		**75.5%**	**13.3%**	**7.4%**	**3.6%**
SATISFACTION RATING		**92.4%**		**9.0%**	

Committees and Associations

Canadian Association of Workers' Advisors and Advocates

The Canadian Association of Workers' Advisors and Advocates (CAWAA) is a national organization established to develop a professional system of sharing information and best practices across jurisdictions and explore emerging workers' compensation issues relevant to workers while respecting its members' distinct workers' compensation mandates.

The Chief Worker Adviser represents the Nova Scotia Workers' Advisers Program at this association and chairs its Research Committee. Additional information on this association is available on their website: http://cawaa.org/

Workplace Safety and Insurance System Advisory Councils and Working Groups

Nova Scotia's **Workplace Safety and Insurance System** (WSIS) includes workers, employers, the relevant statutory agencies (the WCB, WCAT, the Occupational Health and Safety Division of the Department of Labour and Workforce Development, and the Workers' Advisers Program), and others who provide services in the system. Additional information is available on the WSIS website: http://www.wsis.ns.ca/index.php

The **System Liaison Committee** comprises representatives of the worker and employer communities, each of the four system partner agencies (the WCB, WCAT, the Occupational Health and Safety Division of the Department of Labour and Workforce Development, and the Workers' Advisers Program), members of the Occupational Health and Safety Advisory Council, and members of the WCB's Board of Directors. The role of this Committee is to advise the WSIS Coordinating Committee (consisting of the Chair of the WCB Board of Directors and the Deputy Minister of the Department of Labour and Workforce Development) on various workers' compensation issues.

The **Issues Resolution Working Group** consists of representatives from the Workers' Advisers Program, the WCB, and WCAT, and meets regularly to discuss workers' compensation issues and advise system partners on ways to improve issues resolution in the workers' compensation system.

The **Heads of Agencies Committee** comprises the heads of the four statutory system agencies:

- Director of the Occupational Health and Safety Division;
- Chief Worker Adviser of the Workers' Advisers Program;
- Chief Appeal Commissioner of WCAT; and
- CEO of the WCB.

Members of the Heads of Agencies Committee are responsible for the ongoing delivery of service to workers and employees in the system and for measuring and reporting of outcomes and progress in alignment with system goals. They are also responsible for coordinating strategic plan implementation.

Other Committees and Associations

Workers' Advisers Program staff are involved in many other committees and associations to enhance their contribution to the workers' compensation system, the Department, and the community. They include:

- Joint Occupational Health and Safety Committee
- Labour and Workforce Development Senior Management
- Nova Scotia Barristers' Society
- Canadian Bar Association
- Association of Workers' Compensation Boards of Canada
- Labour and Workforce Development Human Resource Initiatives Team
- United Way Campaign
- French Language Services Committee
- Canada Games
- Human Resources Initiative Team.

Professional Development and Training

This year, as in the past, Program staff members took part in training programs to enhance their professional skills and personal development. Among the courses staff attended was the Canadian Bar Association (CBA) annual professional development course "Get Smart: Keeping up with the Latest in the Law" in January 2010, CBA "Privacy Issues in Civil Litigation", and various CBA section meetings.

Staff members attend Departmental mandatory training, including First Aid/CPR, Introduction to Occupational Health and Safety, Respectful Workplace, and Diversity and Employment Equity Education as required and workloads permit.

Other training includes:

- Effective Negotiating & Influencing Skills at St. Mary's University
- Coaching the Generations in the Workplace
- Recruitment and Selection for Hiring Managers
- OHS for Managers & Supervisors
- Leading a Respectful Workplace
- Beyond Conflict
- Diversity for Leaders
- Financial Management Training
- Leadership Skills for Teams
- Stress Management.